

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

QUALITY TERMINAL SERVICES, LLC¹

Employer

And

INTERNATIONAL ASSOCIATION OF MACHINISTS
& AEROSPACE WORKERS, AFL-CIO

Petitioner

QUALITY TERMINAL SERVICES OF ILLINOIS, LLC

Employer

And

INTERNATIONAL ASSOCIATION OF MACHINISTS
& AEROSPACE WORKERS, AFL-CIO

Petitioner

INTERNATIONAL UNION OF OPERATING
ENGINEERS LOCAL 150, AFL-CIO²

Intervenor

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS LOCAL 705, AFL-CIO

Intervenor

Cases 13-RC-20894
13-RC-20904

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

¹ The names of the parties appear as amended at the hearing.

² International Union of Operating Engineers Local 150, AFL-CIO was added as an intervenor to these petitions due to the fact that it represents all heavy equipment mechanics for the Employers. The parties all stipulated on the record that the heavy equipment mechanics for both Employers are represented by Local 150. Any mention in this decision of mechanics specifically excludes any employees already represented by Local 150.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record³ in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employers are engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.⁴

3. The labor organization(s) involved claim(s) to represent certain employees of the Employers.

4. No question affecting commerce exists concerning the representation of certain employees of the Employers within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act for the following reasons:

The instant petitions were filed by the International Association of Machinists & Aerospace Workers, AFL-CIO (hereinafter IAM or Petitioner) to represent certain mechanics of the Employers. I find that the petitions are barred by contracts between the Employers and International Brotherhood of Teamsters Local 705, AFL-CIO (hereinafter referred to as Local 705), which covers the petitioned for employees. While Local 705 has attempted to disclaim interest in the mechanics, I find that this disclaimer is not effective because the disclaimer was collusive, and made pursuant to an agreement between IAM and Local 705 with the purpose of avoiding a contract bar.

Quality Terminal Services, LLC (hereinafter referred to as QTS), provides intermodal services to railroad companies at three locations in the Chicago area, one in the city of Chicago, one in Cicero, Illinois and, pursuant to a more recent contract, a location in Joliet, Illinois. Quality Terminal Services of Illinois (hereinafter referred to as QTSI) operates a facility on 59th Street in Chicago. The facts in regard to both Employers are substantially equivalent, and will be dealt with jointly unless otherwise specified.

FACTS

1. QTS

Since at least May 2000, QTS has been operating facilities in Chicago and in Cicero, Illinois. In May 2000, Teamsters Local 705 was certified by the Board as the

³ The positions of the parties as stated at the hearing and in their briefs have been carefully considered.

⁴ The Employers, Quality Terminal Services of Illinois and Quality Terminal Services, LLC are both corporations engaged in the business of providing intermodal terminal services.

exclusive bargaining representative for all drivers and mechanics at both locations. Pursuant to this certification, the parties entered into a collective-bargaining agreement covering those employees, which is effective from June 1, 2001, to May 31, 2005. There is no dispute that the employees, both mechanics and drivers, have been working under the terms and conditions of that agreement since its inception.

In August 2002, QTS was contracted to provide services at an additional facility, and began operating a facility in Joliet, Illinois. To staff the operation, mechanics and drivers from Cicero were given an opportunity to bid on positions in Joliet. Approximately 11 of the 62 drivers and 2 of the six mechanics at Joliet transferred from Cicero. The remainder of the employee complement consists of new hires.

Operations began in Joliet in October 2002, but on September 20, 2002, Local 705 and QTS agreed to extend the terms of the contract to the employees working at the Joliet facility. Currently, all non-probationary employees are paying dues, having retirement and health contributions made to the Union funds, and are otherwise subjected to the terms of the contract.

On November 4, 2002, IAM filed a petition in Case 13-RC-20894 with Region 13 requesting an election to be held for the six mechanics currently working at the Joliet facility. The petition made no reference to any mechanics at the Cicero or Chicago facility. On November 18, 2002, Local 705 disclaimed interest in representing any mechanics at the Joliet facility. It made clear however, that this disclaimer did not apply to any drivers at any facility.

2. QTSI

QTSI operates one facility on 59th street in Chicago, Illinois, which until July 20, 2002, was operated by another contractor, Central Intermodal. Due to the need for a rapid and efficient transition, QTSI hired at least eighty percent of Central Intermodal's employees that were already working at the site. At the 59th Street site, Central Intermodal maintained a contract with Teamsters Local 705 representing the drivers and mechanics at that facility. QTSI voluntarily recognized Local 705 and bargained a contract for the employees, which is currently applied to all non-probationary employees.⁵

On November 8, 2002, IAM filed a petition to represent all the mechanics currently working at the 59th Street facility. On November 18, 2002, Local 705 disclaimed interest in the mechanics portion of the unit.

⁵ While the contract between Local 705 and QTSI was not produced as an exhibit at the hearing, enough testimony was presented to show that the contract did in fact exist, and that it covered the petitioned for employees. Furthermore, testimony was presented to show that the terms of the contract were being applied at least to the non-probationary employees at the 59th street facility.

3. The Disclaimer

Local 705 stated on the record, and in the November 18, 2002 communication that it no longer wishes to represent the mechanics employed at the Joliet facility or the 59th street location. Otis Cross, President of Teamsters Local 705, testified that Local 705 has always had a positive relationship with IAM, and that IAM's desire to represent the mechanics of QTS and QTSI was the sole reason for Local 705's disclaimer. Cross also testified that the disclaimer was made after an agreement was reached between IAM and Local 705 in November 2002.

POSITIONS OF THE PARTIES

1. The Employers

Both Employers make identical arguments. They contend that Local 705's disclaimer is not valid and, accordingly, their collective-bargaining agreements with Local 705 bar the current petitions filed by IAM. The Employer states that in order for a disclaimer to be valid, it must be clear, unequivocal, and made in good faith, in accordance with Board law. *Retail Associates, Inc.*, 120 NLRB 388 393-394(1958). If the disclaimer was made for reasons other than those that incorporate a genuine and sincere desire to abandon representation, it is ineffective and does not negate a contract bar. *Mack Trucks, Inc.*, 209 NLRB 1003 (1974).

2. The Unions

Both Unions maintain that Local 705 has disclaimed interest in the mechanics, and, since there has been no showing of bad faith on the part of Local 705 by the Employers, the disclaimer should be accepted and an election be run to determine whether the mechanics at the two facilities wish to be represented by IAM.

ANALYSIS AND CONCLUSIONS

1. Validity of Disclaimer

It is well established that a valid disclaimer of the incumbent union removes any contract bar that may exist as a result of a contract between the Employer and the incumbent union. *American Sunroof Corporation* 243 NLRB 1128, 1129 (1979). In order for a disclaimer to be valid, it must be clear, unequivocal, and made in good faith. *Retail Associates* 120 NLRB at 394 (1958). The disclaiming Union must not act in any way inconsistent with its disclaimer either before or after the actual date of the disclaimer. *3Beall Bros.* 110 NLRB 685 (1955); *Windee's Metal Industries* 309 NLRB 1074 (1992).

While Local 705's disclaimer in the instant case is clear and unequivocal, the Board examines the disclaiming party's motives to determine whether or not the

disclaimer is ultimately valid. *Mack Trucks, Inc.*, 209 NLRB at 1004. If a disclaimer results from a collusive agreement between the contracting union and the union that is seeking an election, instead of from a sincere desire to cease its representational function, the disclaimer is viewed as a sham and, ultimately, as invalid. *Id.*

In the instant case, Local 705 representative Otis admitted in his testimony that an agreement was reached between Local 705 and IAM regarding the disclaimer of the mechanics. Otis testified that Local 705's desire to continue the working relationship between the two unions prompted the discussion and agreement between Local 705 and IAM, which ultimately resulted in the November 18, 2002 disclaimers. There is no dispute that this was the only reason for Local 705's disclaimer and that, but for, the disclaimer, Local 705 would continue to represent the mechanics in the contractual unit.

Local 705 and IAM, by their agreement that resulted in the disclaimer, were parties to what is essentially a collusive agreement. The evidence presented shows that the Unions simply decided which union should be the bargaining representative for the mechanics and took whatever necessary steps to promote that decision. The union's attempt to carve out a piece of the historical bargaining unit provides further support for the view that Local 705's motive was collusive, rather than a sincere desire to cease representational duties. This agreement clearly ignored the long established principles not only of freedom of employee choice, but also of industrial stability and reliability. Accordingly, I find the disclaimer made by Local 705 is the result of collusion between the Petitioner and Local 705 and, therefore, it is invalid.

Since the disclaimer is not valid, the traditional contract bar principles apply. Here, the contracts between both QTS and QTSI and Local 705 were negotiated, reduced to writing and signed by the appropriate parties. The contracts covered the mechanics and drivers and governed the working conditions, pay and work rules for those employees. Accordingly, the contracts are clearly valid and bar an election for the mechanics units sought in the petitions. See, *Appalachian Shale Products Co.*, 121 NLRB 1160(1958); *DePaul Adult Care Communities, Inc.*, 325 NLRB 681 (1998).

To allow an election in this circumstance would undermine the well-established goal of the Board to ensure stability and industrial peace. Accordingly, I find that the attempted disclaimer is invalid and that petitions are barred by the current collective bargaining agreements between the Employers and Local 705.

ORDER

IT IS HEREBY ORDERED that the petitions in the above matters be, and they hereby are, dismissed.

QUALITY TERMINAL SERVICES, LLC
CASE 13-RC-20894
QUALITY TERMINAL SERVICES OF ILLINOIS, LLC
CASE 13-RC-20904

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court Building, 1099-14th Street, N.W., Washington, D.C. 20570**. This request must be received by the Board in Washington by December 30, 2002.

DATED December 16, 2002 at Chicago, Illinois.

/s/Elizabeth Kinney
Regional Director, Region 13

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332-2500
Bar to Election – Contract